

12.00.050 CRIMINAL HISTORY RECORD INFORMATION (CHRI) (CALEA 82.1.7)

Dissemination of criminal history record information (CHRI) is strictly controlled by State law and City policy. The Department and all of its employees shall comply with the rules of dissemination of CHRI and to the procedures associated with this policy.

In order to reasonably assure the security of criminal history records, the Department must place restrictions on the facilities and system operating areas (whether for computerized or manual systems) and the content of files and systems documentation and upon direct access thereto by Department personnel.

CHRI File Information

Criminal History Record Information is information containing:

- ❖ An individual's name
- ❖ The date and place of arrest, charge or detention
- ❖ Any disposition of arrest, charge or detention
- ❖ The name of the arresting and/or charging agency

CHRI includes:

- ❖ Information generated or collected by and stored or maintained by BPD
- ❖ Information properly obtained by BPD from another agency and retained for Department use, including federal, state, or local rap sheets

Non-conviction data is all CHRI relating to an incident which has not led to a conviction or other disposition adverse to the subject and for which proceedings are no longer actively pending. Non-conviction data includes:

- ❖ Police decisions not to charge or refer a case to the prosecutor
- ❖ Prosecutorial decisions not to charge
- ❖ Dismissals (except dismissals following probation, suspension, or deferral)
- ❖ Acquittals
- ❖ Arrest information more than one year old with no related disposition and with respect to which the prosecutor will not certify in writing that proceedings are still pending

A deferral prosecution does not become non-conviction data until there is a final decision to dismiss charges or not to prosecute.

Conviction Record is all CHRI relating to an incident which led to a conviction other disposition adverse to the subject.

Conviction or other disposition adverse to the subject means any disposition of charges except:

- ❖ A decision not to prosecute
- ❖ Dismissal

- ❖ Acquittal
- ❖ Except when the acquittal is due to a finding of “not guilty by reason of insanity” pursuant to chapter 10.77 RCW and person was committed pursuant to chapter 10.77 RCW

A dismissal after probation, suspension, or deferral is a disposition adverse to the subject.

Criminal Justice Agencies

A Criminal Justice Agency is:

- ❖ A court
- ❖ A local, state or federal agency which administers criminal justice pursuant to statute or executive order; and includes subunits of non-criminal justice agencies if the subunit allocates a substantial part of its annual budget to and has as its primary functions its administration of criminal justice.

The following agencies are considered criminal justice agencies:

- ❖ Washington State Patrol, including the State Identification Section
- ❖ Foreign, state and local governmental law enforcement, prosecutorial and correctional agencies or departments
- ❖ Courts at any level, if they exercise criminal jurisdiction
- ❖ Adult Corrections Division of the Department of Social and Health Service, including institutions and probation and parole services, and appropriate certified subunits
- ❖ The Board of Prison Terms and Paroles
- ❖ The Office of Information Systems of the Department of Social and Health Services, and any other agency that collects, stores, and disseminates CHRI
- ❖ An agency or subunit that has been certified as a criminal justice agency by the Washington State Patrol (WAC 446.20.060)
- ❖ Enforcement Division of the Liquor Control Board
- ❖ Department of Labor and Industries - Crime Victims Compensation Unit
- ❖ State Fire Marshal

Administration of Criminal Justice

Administration of Criminal Justice is the performance of any of the following activities relating to accused persons or criminal offenders:

- ❖ Detection, apprehension, detention
- ❖ Pretrial release, post-trial release, prosecution
- ❖ Adjudication, correctional supervision, rehabilitation

This term also includes Criminal Identification activities - the collection, storage, and dissemination of CHRI - and the compensation of victims of crime.

This term does not include crime prevention activities as a sole function of criminal defense activities.

Disposition means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

Processed by the Criminal Justice System includes the entire period of time and all proceedings from arrest through correctional supervision and final discharge from parole or any other final disposition.

Dissemination of Criminal History Record Information (CHRI)

Dissemination means disclosing CHRI or its absence to any person or agency outside the Bellevue Police Department (BPD). Dissemination includes:

- ❖ Confirming the existence or nonexistence of CHRI
- ❖ Disclosing CHRI to the subject thereof

Dissemination does not include:

- ❖ Furnishing CHRI to personnel of any criminal justice agency which jointly participates with BPD in the maintenance of a single record-keeping department
- ❖ Furnishing CHRI by one CJA to another for the purpose of processing a matter through the criminal justice system
- ❖ Reporting an event to a record-keeping agency for the purpose of maintaining the record

All CHRI pertaining to an arrest, detention, indictment, information, or other formal criminal charge made after December 31, 1977, will not be disseminated without a statement of disposition unless:

- ❖ A disposition, having occurred within 10 days prior to dissemination, has not been reported to BPD Records Unit; or
- ❖ Said disposition was received by BPD Records Unit within 72 hours prior to dissemination

Providing the criteria established in this procedure are met, the following CHRI may be disseminated without restriction:

- ❖ Conviction records (state rap sheets may only be disseminated in other criminal justice agencies for criminal justice purposes)
- ❖ Information pertaining to an incident for which a person is currently being processed by the Criminal Justice System

If the fact that a conviction is on appeal is known to Department Records Unit personnel, such information will be included in any dissemination as explained above.

CHRI including information concerning a felony or gross misdemeanor will not be disseminated without first making inquiry of the Washington State Identification Section (WSIS) to obtain most current and complete information available, except where:

- ❖ Information is needed for the administration of criminal justice for which time is of the essence and the WSIS is technically or physically unable to respond within the required time; or

- ❖ The information requested is within the direct knowledge of BPD Records Unit (Bellevue PD case and we have most current information); or
- ❖ The information requested is contained in a summary sheet issued by the WSIS to BPD Records Unit not more than 30 days prior to dissemination; or
- ❖ The information is contained solely with BPD Records Unit files and is disseminated pursuant to statute, executive order, court rule, or court order; or
- ❖ The information is for the express purpose of research, evaluation, or statistical activities based upon information maintained in BPD files and is obtained under contract with BPD

CHRI including information concerning a misdemeanor will not be disseminated without first making inquiry of the District Court to obtain the most current disposition information available.

CHRI including non-conviction data may be disseminated to:

- ❖ Another criminal justice agency
- ❖ Implement statute, ordinance, executive order, or a court rule, decision or order which expressly authorizes or directs that non-conviction data be available or accessible for a specific purpose
- ❖ Individuals and agencies pursuant to our contract with a criminal justice agency to provide services related to the administration of criminal justice.
- ❖ Individuals and agencies pursuant to contract for the express purpose of research, evaluative, or statistical activities.
- ❖ Any agency certified as a criminal justice agency by the Washington State Patrol

The following information may be given to persons who verify in writing that they have suffered physical loss, property damage, or injury that is compensable through civil action:

- ❖ The identity and last known address of the person(s) suspected of being responsible for the loss, damage or injury, without regard to suspects' age, and regardless of whether charges have been filed, declined or dismissed
- ❖ Unless release of information would interfere with an ongoing criminal investigation, disclosure of identifying information, including photographs of suspects, will be made in any action where the victim/plaintiff alleges a violation of RCW 9A.50.020 (Interference with a health care facility)

Disclosure of some investigative information to a victim does not establish a duty to disclose additional information except as compelled by legal process.

Records Unit Responsibilities

It will be the responsibility of the commander of the Records Unit to assure that adequate records are maintained by BPD relative to the dissemination CHRI. Such records will include, but not be limited to the following:

- ❖ To whom the CHRI was disseminated
- ❖ Date of dissemination

- ❖ Subject of the CHRI
- ❖ A brief description of information disseminated.

The Records Unit will retain such dissemination records for not less than one year.

Records Unit Files (CALEA 82.1.1, 82.1.2)

The Records Unit maintains separate records and criminal history files for adults and juveniles. The Records Unit separates files as mandated by state statutes RCW 40.14, Preservation and Destruction of Public Records; RCW 13.50 Juvenile Records Access; and RCW 10.97, Washington State Criminal Records Privacy Act. Copies of all state statutes are maintained in the Records Unit.

Information contained in the criminal history files is stored electronically within the RMS system. Paper records are stored numerically and chronologically. All juvenile files are identified by electronic tagging or clearly readable stamp indicating "Juvenile."

The destruction or expungement of juvenile records is covered by state law, RCW 13.50, RCW 10.97, and elsewhere in this Chapter of the policy manual.

Photographs of juvenile suspects are captured digitally and individually stored in the RMS system. Photographs of juvenile suspects taken via 35 mm camera are maintained in a manual file reserved exclusively for juvenile photos, and maintained by the Records Unit.

Fingerprints of juveniles will be dispersed as follows, per Process Control Number (PCN) guidelines:

- ❖ One set sent to Washington State ID
- ❖ One set sent to King County AFIS
- ❖ Two sets filed with the juvenile's CHRI packet that is kept in Records

Juvenile photographs and fingerprints will be maintained as the result of an arrest involving criminal investigations.

Only authorized law enforcement agencies or entitled social service agencies will be allowed access to these items. (Reference RCW 13.50)

The Records Unit is responsible for maintenance of the CHRI packets. Expungement of prints, photos, or materials of identification will occur on order of a competent court and/or state law. (Reference RCW 13.50)

Records Access

No personnel of a non-criminal justice agency will be granted access to CHRI without first obtaining security clearance from the Administrative Services Section Commander.

Direct access to CHRI facilities and system operating areas by Department employees is restricted to those authorized persons designated by the Administrative Services Section Commander. The Records Unit is located in a secured area on the second floor of City Hall. Access is by key card or by authorized escort only. Key card usage is tracked through the card key control computer. Processed case reports are kept in the secured Records Unit area. Original case files shall not be removed from the Records Unit without authorization by a Records supervisor or designee. Personnel who need to review a case can request a copy of the case from a Records Specialist. Highly sensitive and/or large files may be checked out for a period not to exceed 48 hours with the approval of a Records Supervisor or designee. The employee requesting the materials must acknowledge receipt of the material by signing a "check-out" log which will be placed into the file jacket.

Access to all computerized records is controlled by assigned security levels. All authorized personnel must have been given access through an authorized password. Only authorized personnel have the ability to enter records into the RMS computer system. Only certain personnel have the ability to modify and/or delete records.

All personnel who have access to Police Department records have gone through an extensive background investigation.

The current and previous year's offense, arrest, and accident reports are maintained in a Records file room. Each report is filed sequentially by year and identifying number.

Records other than those listed above are stored in archives in the property room for a period of 10-years, and then purged according to State law. Major crimes cases are kept indefinitely.

Personnel Security

Any person seeking employment in or assignment to the Administrative Services Section, or seeking authorization for direct access to criminal history records maintained by Administrative Services, may be required to submit to any or all of the following:

- ❖ Fingerprinting
- ❖ A polygraph exam
- ❖ Background Investigation

Records Security

The Department's Criminal History Records Information (CHRI) system will be designed and operated in accord with procedures which will:

- ❖ Reduce the possibility of physical damage resulting from fire, water, power failure or other natural or manmade disaster
- ❖ Reduce the possibility of physical damage to the information resulting from unauthorized access
- ❖ Prevent modification, destruction, access, change, purging or overlay of CHRI information by unauthorized personnel
- ❖ Prohibit computerized inquiry, record updates, or destruction of records from any terminal other than those authorized to perform CHRI functions
- ❖ Assure that purging or destruction of records is limited to authorized personnel, and CHRI system refuse is transferred or destroyed under reasonable secure conditions to effectively guard against unauthorized availability
- ❖ Use operations procedures in computerized systems to detect and store unauthorized attempts to penetrate any Department CHRI system, program or file which procedures are known only to authorized Department employees with responsibility for CHRI system security.

The Records Unit shall comply with the Privacy and Security Provisions as mandated by state statute; RCW 10.97, Washington State Criminal Records Act; RCW 13.50, Juvenile Records Access; RCW 40.14, Preservation and Destruction of Public Records; RCW 42.17, Disclosure of Public Records; and RCW 46.52.080, Confidentiality of Reports. Copies of statutes are maintained in the Records Unit by the Records Supervisor.

Personal Review of CHRI

Any person who believes he/she is or may be the subject of CHRI maintained by BPD Records Unit may, by appropriate request, review such CHRI. This right to access and review of CHRI does not include information contained to intelligence, investigative or similar files, or any information not defined as CHRI.

Requests for review of CHRI are to be made in writing on a form provided at BPD Records Unit during normal business hours by the person whose file is subject to review. The requesting person must provide suitable identification as determined by the commander of the Records Unit.

An appointment will be made for the review of the requested CHRI during normal business hours within ten working days from the date of the request.

The subject of CHRI must appear in person to review the CHRI. However, he/she may be accompanied by counsel, an interpreter, or other appropriate person.

CHRI being reviewed may not leave the immediate control of the Records Specialist providing the information.

No person may retain or mechanically reproduce any non-conviction information, except for the purpose of challenge or correction. In order to obtain a copy of such non-conviction data for the purpose of challenge or correction, the subject must first state in writing his/her belief that the information regarding him/her is inaccurate, incomplete, or maintained in violation of law.

Deletion of Non-conviction CHRI

CHRI consisting solely of non-conviction data is subject to deletion from BPD Records Unit files which are available and generally used to respond to criminal history inquiries or otherwise identifying individuals.

Non-conviction CHRI may be subject to deletion if:

- ❖ It is maintained in the type of file identified above; and
- ❖ Two years or longer have elapsed since the CHRI became non-conviction data as a result of the entry of a disposition favorable to the defendant; or
- ❖ Three years have passed from the date of arrest or the issuance of a citation or warrant for an offense for which a conviction was not obtained.

Non-conviction CHRI will not be deleted if:

- ❖ The disposition of the record was a deferred prosecution or similar diversion of the alleged offender which has not become non-conviction data; or
- ❖ The subject of the record has had a prior felony or gross misdemeanor conviction; or
- ❖ The subject of the record has been arrested or charged with another crime in the intervening period; or
- ❖ The subject of the record is a fugitive; or
- ❖ The case is under active prosecution according to current written certification by the prosecuting attorney

Deletions of non-conviction CHRI will not be made except at the written request of the subject of such CHRI.

Any record may be deleted or modified by court order pertaining to a particular case, individual, or event. All such court orders will be referred, with a copy of the record concerned, to the Department Legal Advisor prior to taking any action on the subject record.

Upon notification from the Legal Advisor, The Records Unit will take such action as the court order directs unless the Legal Advisor requests that the record be forwarded to his/her office for purposes of appeal.

Challenge of CHRI

All challenges to CHRI are to be reviewed by the Administrative Services Section Commander before either correction or refusal is made.

CHRI maintained by BPD Records Unit may be challenged on the basis of accuracy, completeness or legality of maintenance, in whole or in part by the subject thereof. All challenges will clearly identify the CHRI challenged and will be:

- ❖ Made during normal business hours
- ❖ Submitted on forms provided by BPD

If the CHRI being challenged originated from another Washington law enforcement agency, BPD Records Unit will:

- ❖ Supply the subject with the address of the agency
- ❖ Forward a copy of the challenge to the originating agency(s) along with a copy of the challenged CHRI
- ❖ Check BPD records to ensure that the CHRI is correctly recorded
- ❖ If BPD originally submitted or generated the CHRI being challenged, it will:
 - ❖ Acknowledge receipt of the challenge within 10 business days of receipt thereof; and
 - ❖ Within 10 business days of acknowledgment, amend the CHRI found to be inaccurate, incomplete, or maintained in violation of law; or
 - ❖ Inform the subject challenging the CHRI in writing of BPD's refusal to amend, its reasons therefore, and the procedures for review of the refusal

If BPD, as originating agency, corrects or amends challenged CHRI, it will:

- ❖ Provide to the subject the names of all non-criminal justice agencies or person to which the incorrect CHRI was disseminated; and
- ❖ Disseminate the corrected or amended CHRI to every recipient of the incorrect CHRI within one year prior to the date of the challenge

If BPD Records Unit determines that it has generated significant unchallenged and inaccurate CHRI, it will correct the same and:

- ❖ Disseminate corrected CHRI to every recipient of the erroneous CHRI within the preceding one year; and
- ❖ Disseminate corrected CHRI to the subject thereof

Review of Refusal to Amend CHRI

The subject of challenged CHRI which BPD Records Unit has refused to amend or correct may request review of said refusal to the Chief of Police. All requests for review must be made in writing and within 20 days of the subject's receipt of the refusal.

The Chief of Police will make a final determination of the challenge within 30 days from the date review was requested unless the review period is extended an additional 30 days for good cause. The subject of the challenged CHRI will be notified in writing of the decision of the Chief of Police.